

Madrid, June 16<sup>th</sup>, 2018

## Inheritance and donation taxes in Spain for non-residents

In Spain, the Inheritance and Donations Tax (known by its abbreviation in Spanish as ISD) is a direct, personal and state tax that charges the acquisitions by natural persons in case of inheritance, life insurance benefit and donation. However, the State transfers to the Autonomous Regions diverse competences with regard to these taxes and that causes significant taxation differences depending on the relevant region.

For this reason, the ISD has become a recurrent mechanism for Autonomous Regions in order to attract taxpayers, applying different tax advantages to those residing on their respective territories.

The determination of the relevant applicable regulations depends on what is called “the point of connection”.

Regarding this matter, the point of connection in acquisitions *mortis causa* (in case of inheritance or life insurance benefit) is determined by the deceased residence. In acquisitions by donation of immovable property, by where they are located. Finally, in acquisitions by donation of other assets and rights, by the donee residence.

Acquisition	Connecting point
<i>Mortis causa</i> (inheritance or life insurance benefit)	Deceased residence
Donation of immovable property	Property location
Donation of assets and rights, except immovable property	Donee residence

The problem arises when there is no point of connection with any regional regulation, because the deceased or the donee is a non-resident in Spain. For example, in the case of a person residing in Germany dies leaving all his inheritance to his daughter who resides in Spain, since there is no point of connection between the deceased (German resident) and any Regional Government in Spain, where should that inheritance be taxed and which regulations apply?

The Court of Justice of the European Union (CJEU) by its Resolution of September 3<sup>rd</sup>, 2014, condemned Spain regarding the ISD, since non-residents in Spain could not benefit from the tax advantages that the different Regional Government had established. The CJEU considered that this was a discrimination against non-residents and, therefore, violated Article 63 of the Treaty on the Functioning of the European Union (TFUE), which prohibits “all restrictions on the movement of capital between Member States and between Member States and third countries”.

After that, the Spanish Government amended the Inheritance and Donations Tax starting January 1<sup>st</sup>, 2015, allowing European Union (EU) and European Economic Area (EEA) residents to benefit of the same tax benefits as residents in Spain, maintaining the previous regime for non-EU and EEA residents.

The recent Sentence of the Spanish Supreme Court of February 19<sup>th</sup>, 2018, strongly condemns this discrimination against non-EU and EEA residents establishing that the CJEU Resolution also protects residents of countries outside the EU and EEA, since Article 63 of the TFEU prohibits all restrictions on the movement of capital between Member States and also between these and third countries.

Therefore, it is expected that the Spanish authorities will act quickly by extending non-discrimination in relation to ISD to any non-resident.

Meanwhile, in the following scheme we can observe the current non-residents in Spain position related to the ISD:

DECEASED RESIDENCE		ASSETS LOCATION	SUCCESSOR NON-RESIDENT IN SPAIN	SUCCESSOR RESIDENT IN SPAIN
DECEASED RESIDENT IN SPAIN		ASSETS LOCATED IN SPANISH TERRITORY	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located in Spain (real obligation)</li> <li>- In case of EU or EEA resident, regional regulations corresponding to the deceased residence can be applied</li> <li>- In case of non-EU or EEA resident, only the state regulations may apply</li> </ul>	<ul style="list-style-type: none"> <li>- Submission of the tax to the Regional Government corresponding to the deceased residence for the value of the assets located throughout the world (personal obligation)</li> <li>- Regional regulations corresponding to the deceased residence may apply</li> <li>- Taxes paid abroad for the acquisition of assets located outside of Spain can be deducted</li> </ul>
		ASSETS LOCATED OUTSIDE THE SPANISH TERRITORY	Not taxable	
DECEASED NON-RESIDENT IN SPAIN	EU OR EEA RESIDENT	ASSETS LOCATED IN SPANISH TERRITORY	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located in Spain (real obligation)</li> <li>- Regional regulations corresponding to the assets location can be applied</li> </ul>	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located throughout the world (personal obligation)</li> <li>- Regional regulations corresponding to the assets location or, failing that, to the successor residence may apply</li> <li>- Taxes paid abroad for the acquisition of assets located outside of Spain can be deducted</li> </ul>
		ASSETS LOCATED OUTSIDE THE SPANISH TERRITORY	Not taxable	
	NON-EU OR EEA RESIDENT	ASSETS LOCATED IN SPANISH TERRITORY	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located in Spain (real obligation)</li> <li>- Only the state regulations may apply</li> </ul>	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located throughout the world (personal obligation)</li> <li>- Only the state regulations may apply</li> <li>- Taxes paid abroad for the acquisition of assets located outside of Spain can be deducted</li> </ul>
		ASSETS LOCATED OUTSIDE THE SPANISH TERRITORY	Not taxable	

DONOR RESIDENCE	ASSETS LOCATION	NON-RESIDENT IN SPAIN DONEE	RESIDENT IN SPAIN DONEE
DONOR RESIDENT OR NON-RESIDENT IN SPAIN	IMMOVABLE PROPERTY LOCATED IN SPANISH TERRITORY	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located in Spain (real obligation)</li> <li>- In case of EU or EEA resident, regional regulations corresponding to the assets location can be applied</li> <li>- In case of non-EU or EEA resident, only the state regulations may apply</li> </ul>	<ul style="list-style-type: none"> <li>- Submission of the tax to the Regional Government corresponding to the assets location</li> <li>- Regional regulations corresponding to the assets location may apply</li> </ul>
	MOVABLE PROPERTY LOCATED IN SPANISH TERRITORY	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located in Spain (real obligation)</li> <li>- In case of EU or EEA resident, regional regulations corresponding to the assets location during the last 5 years can be applied</li> <li>- In case of non-EU or EEA resident, only the state regulations may apply</li> </ul>	<ul style="list-style-type: none"> <li>- Submission of the tax to the Regional Government corresponding to the donee residence for the value of the assets located throughout the world (personal obligation)</li> <li>- Regional regulations corresponding to the donee residence may apply</li> <li>- Taxes paid abroad for the acquisition of assets located outside of Spain can be deducted</li> </ul>
	MOVABLE AND IMMOVABLE PROPERTY LOCATED OUTSIDE THE SPANISH TERRITORY	Not taxable	<ul style="list-style-type: none"> <li>- Submission of the tax to the State for the value of the assets located throughout the world (personal obligation).</li> <li>- In case of immovable property located outside of the EU or EEA, regional regulations corresponding to the donee residence can be applied</li> <li>- In case of immovable property located outside of the EU or EEA donation, only the state regulations may apply</li> <li>- Taxes paid abroad for the acquisition of assets located outside of Spain can be deducted</li> </ul>

\* Personal obligation: taxation requirement for all assets and rights regardless of where they are located or can be exercised.

\* Real obligation: taxation requirement for the assets and rights when they are located, could be exercised or have to be accomplished in Spanish territory.